

FILED

**United States Court of Appeals
Tenth Circuit**

UNITED STATES COURT OF APPEALS

January 26, 2016

FOR THE TENTH CIRCUIT

**Elisabeth A. Shumaker
Clerk of Court**

AMERICAN ATHEISTS, INC., a
New Jersey corporation authorized
in the State of Oklahoma; WILLIAM
POIRE; AIMEE BREEZE,
individually,

Plaintiffs - Appellants,

v.

TRAIT THOMPSON, Chair of the
State Capitol Preservation
Commission; VICKIE HICKS,
Member (Governor) of the State
Capitol Preservation Commission;
MARK LIOTTA, Member (House)
of the State Capitol Preservation
Commission; CAROLYN
THOMPSON, Member (House) of
the State Capitol Preservation
Commission; VACANT SEAT,
Member (House) of the State
Capitol Preservation Commission;
LOU KERR, Member (Senate) of the
State Capitol Preservation
Commission; JUDY JOHNSON,
Member (Senate) of the State
Capitol Preservation Commission;
PAUL MEYER, Member (Governor)
of the State Capitol Preservation
Commission; LINDA
EDMONDSON, Member (Governor)
of the State Capitol Preservation
Commission; BRUCE FISHER,
Member (Supreme Court) of the
State Capitol Preservation
Commission; DUANE MASS,
Ex-officio Capitol Architect and

No. 15-6059
(D.C. No. 5:14-CV-00042-C)
(W.D. Okla.)

Curator; MICHELLE DAY,
Ex-officio Administrator Division of
Capitol Assets Management; DOUG
KELLOGG, Ex-officio Capitol
Building Superintendent; JAMES
PICKEL, Chair, Oklahoma Arts
Council; EMMY STIDHAM,
Ex-officio President - Oklahoma
Historical Society,

Defendants - Appellees.

ORDER AND JUDGMENT*

Before **BACHARACH, O'BRIEN, and PHILLIPS**, Circuit Judges.

The appellants challenge the presence of a Ten Commandments monument on the grounds of the Oklahoma State Capitol. During the pendency of the appeal, however, the Oklahoma Supreme Court held that the monument violates the state constitution. *Prescott v. Okla. Capitol Pres. Comm'n*, — P.3d —, 2015 Okla. 54, 2015 WL 3982750 (Okla. July 27, 2015). The monument was ultimately removed roughly two months ago. Accordingly, the appellees move to dismiss this appeal as moot, arguing that no case or controversy remains for us to decide.

* The Court has determined that oral argument would not materially aid our consideration of the appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). Thus, we have decided the appeal based on the briefs.

This order and judgment does not constitute binding precedent except under the doctrines of law of the case, *res judicata*, and collateral estoppel. But our order and judgment may be cited for its persuasive value under Fed. R. App. P. 32.1(a) and 10th Cir. R. 32.1(A).

Though the appellants did not respond to the motion to dismiss, they conceded in their reply brief that the case may have become moot. We agree with the appellees, concluding that the action is moot now that the monument has been removed from the state capitol. Thus, we grant the appellees' motion and dismiss the appeal.

Entered for the Court

Robert E. Bacharach
Circuit Judge